

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff.

Civil Action No.: 18-15099 (ZNQ)(LHG)

$$\mathbf{v}_i$$

SHANT HOVNANIAN, et al.

Defendants.

**VSHPHH TRUST'S STATEMENT OF MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56, Defendant VSHPHH Trust (“VSHPHH Trust”) respectfully submits this Statement of Material Facts in support of its Motion for Summary Judgment.

This recitation of material facts creates a clear picture of the conveyance of the property at issue demonstrating that the VSHPHH Trust factually (and legally) cannot be the nominee or alter ego of Defendant Shant Hovnanian.

STATEMENT OF MATERIAL FACTS

1. Ms. Hovnanian is the daughter of Vahak and Paris Hovnanian and the sister of Mr. Shant Hovnanian.
2. Ms. Hovnanian is the current trustee of the Pachava Asset Trust and the VSHPHH Trust (sometimes hereinafter referred to as the “Trusts”).
3. Ms. Hovnanian’s predecessors in that role included her former sister-in-law and a cousin. At one time, Ms. Hovnanian served as co-trustee of the VSHPHH Trust with Mr. Shant Hovnanian.
4. Ms. Hovnanian works with her family’s bookkeeper to maintain and administer the

Pachava Asset Trust and the VSHPHH Trust.

5. That bookkeeper, Karen Gandolfo, worked for the family in their home construction business for nearly thirty (30) years. The Hovnanian family of builders began their business as an effort to provide value to potential homeowners in the mid-priced real estate marketplace. The Hovnanian brothers are first generation immigrants from Baghdad, Iraq, with a history surrounding the Armenian Genocide in 1915, and made a life in the United States. They are a very close family. This matters because it matters, but also to allow the Court to understand that the real property held by the VSHPHH Trust was intended to be passed on to Vahak and Hasmig (Paris) Hovnanian's grandchildren and that the objective of any transfers to trust was to accomplish assurances that the grandchildren would be provided for in their estate planning.

6. In furtherance of their estate planning objectives to equalize assets to maximize the use of the unified credit and to provide for their grandchildren, on January 1, 2015, Vahak S. Hovnanian and Paris H. Hovnanian a/k/a Paris H. Hovnanian transferred title to the real property located at 1 Dag Hammarskjold Boulevard, Freehold, New Jersey to the VSHPHH Trust, which was recorded on January 31, 2015. (Exhibit "A").

7. The VSHPHH Trust holds legal title to the real property located at 1 Dag Hammarskjold Boulevard, Freehold, New Jersey.

8. The VSHPHH Trust has not conveyed any legal or equitable title to the real property located at 1 Dag Hammarskjold Boulevard, Freehold, New Jersey to any other individual, individuals, or legal entity since July 1, 2015.

9. The United States filed and refiled several notices of federal tax liens that were recorded in the Office of the County Clerk of Monmouth County against Mr. Shant Hovnanian for his purported unpaid federal income taxes as follows:

10. On January 16, 2018, a Notice of a Federal Tax Lien was filed and recorded in the Monmouth County Clerk's Office against the "Shant S. Hovnanian Asset Trust, as nominee of Shant Hovnanian", Serial No.: 271810382, attaching to the real property located at 520 Navesink River Road, Middletown, New Jersey, regarding the tax periods ended December 31, 2002, December 31, 2003, December 31, 2004, and December 31, 2007, in the amount of \$14,243,835.86;

11. On January 16, 2018, a Notice of a Federal Tax Lien was filed and recorded in the Monmouth County Clerk's Office against the "Pachava Asset Trust, as nominee of Shant Hovnanian", Serial No.: 271810381, attaching to the real property located at 520 Navesink River Road, Middletown, New Jersey, regarding the tax periods ended December 31, 2002, December 31, 2003, December 31, 2004, and December 31, 2007, in the amount of \$14,243,835.86:

- a. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on September 26, 2018;
- b. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 1, 2018;
- c. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 12, 2018;
- d. On September 11, 2019, a Notice of Federal Tax Lien Refile was prepared but only with respect to the tax period ended December 31, 2007, in the amount of \$18,452.57.

That Notice was recorded in the Monmouth County Clerk's Office on October 1, 2019;

12. On January 16, 2018, a Notice of a Federal Tax Lien was filed and recorded in the Monmouth County Clerk's Office against the "VSHPHH Trust, as Nominee of Shant Hovnanian", Serial No.: 271810383, attaching to the real property located at 1 Dag Hammarskjold Boulevard, Howell Township, New Jersey, regarding the tax periods ended December 31, 2002, December 31, 2003, December 31, 2004, and December 31, 2007, in the amount of \$14,243,835.86:

- a. September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on September 26, 2018;
- b. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 1, 2018;
- c. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 12, 2018;
- d. On September 11, 2019, a Notice of Federal Tax Lien Refile was prepared but only with respect to the tax period ended December 31, 2007, in the amount of \$18,452.57. That Notice was recorded in the Monmouth County Clerk's Office on October 1, 2019;

13. On January 16, 2018, a Notice of a Federal Tax Lien was filed and recorded in the Monmouth County Clerk's Office against the "VSHPHH Trust, as Nominee of Shant Hovnanian", Serial No.: 271810384, attaching to certain real property located at 124 Wemrock Road, Freehold Township, New Jersey, regarding the tax periods ended December 31, 2002, December 31, 2003, December 31, 2004, and December 31, 2007, in the amount of \$14,243,835.86:

- a. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on September 26, 2018;
- b. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 1, 2018;
- c. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 12, 2018;
- d. On September 11, 2019, a Notice of Federal Tax Lien Refile was prepared but only with respect to the tax period ended December 31, 2007, in the amount of \$18,452.57. That Notice was recorded in the Monmouth County Clerk's Office on October 1, 2019;

14. On January 16, 2018, a Notice of a Federal Tax Lien was filed and recorded in the Monmouth County Clerk's Office against the "VSHPHH Trust, as Nominee of Shant Hovnanian", Serial No.: 271810385, attaching to the real property located at 7 Highway 33, Manalapan Township,

New Jersey, regarding the tax periods ended December 31, 2002, December 31, 2003, December 31, 2004, and December 31, 2007, in the amount of \$14,243,835.86;

- a. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on September 26, 2018;
- b. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 1, 2018;
- c. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 12, 2018;
- d. On September 11, 2019, a Notice of Federal Tax Lien Refile was prepared but only with respect to the tax period ended December 31, 2007, in the amount of \$18,452.57. That Notice was recorded in the Monmouth County Clerk's Office on October 1, 2019;

15. On January 16, 2018, a Notice of a Federal Tax Lien was filed and recorded in the Monmouth County Clerk's Office against the "VSHPHH Trust, as Nominee of Shant Hovnanian", Serial No.: 271810386, attaching to the real property located at Shafto Road, Borough of Tinton Falls, New Jersey, regarding the tax periods ended December 31, 2002, December 31, 2003, December 31, 2004, and December 31, 2007, in the amount of \$14,243,835.86:

- a. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on September 26, 2018;
- b. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 1, 2018;
- c. On September 25, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 12, 2018;
- d. On September 11, 2019, a Notice of Federal Tax Lien Refile was prepared but only with respect to the tax period ended December 31, 2007, in the amount of \$18,452.57. That Notice was recorded in the Monmouth County Clerk's Office on October 1, 2019;

16. On January 16, 2018, a Notice of a Federal Tax Lien was filed and recorded in the Monmouth County Clerk's Office against the "VSHPHH Trust, as Nominee of Shant Hovnanian", Serial No.: 271810389, attaching to the real property located at Wyckoff Mills Road, Howell Township, New Jersey, regarding the tax periods ended December 31, 2002, December 31, 2003, December 31, 2004, and December 31, 2007, in the amount of \$14,243,835.86;

- a. On October 2, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the

amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 4, 2018;

- b. On October 2, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 10, 2018;

17. On May 3, 2018, a Notice of a Federal Tax Lien was filed and recorded in the Monmouth County Clerk's Office against the "VSHPHH Trust, as Nominee of Shant Hovnanian", Serial No.: 271810479, attaching to any interest in VEC Realty LLC, regarding the tax periods ended December 31, 2002, December 31, 2003, December 31, 2004, and December 31, 2007, in the amount of \$14,244,335.86:

- a. On October 2, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 4, 2018;
- b. On October 2, 2018, a Notice of a Federal Tax Lien Refile was prepared but only with respect to the tax periods ended December 31, 2002, and December 31, 2003, in the amount of \$11,276,611.01. That Notice was recorded in the Monmouth County Clerk's Office on October 10, 2018; and

18. On September 11, 2019, a Notice of Federal Tax Lien Refile was prepared but only with respect to the tax period ended December 31, 2007, in the amount of \$18,452.57. That Notice was recorded in the Monmouth County Clerk's Office on October 1, 2019.

19. On October 18, 2018, the IRS filed the within Complaint seeking to validate the Nominee Liens (Dkt. 1).

20. Agent Michael MacGillivray of the IRS prepared a report and provided testimony surrounding the IRS collection efforts as against Mr. Shant Hovnanian. (Exhibit "B").

21. The IRS did not seek to collect from Mr. Shant Hovnanian through the "usual" methods of bank and investment account levies or other collection efforts, but rather immediately sought to impose the Nominee Liens. (MacGillivray Dep. 46:8-47:8; Exhibit "C".)

22. Agent MacGillivray's Report states that the IRS was aware of the transfers of the real properties located at 520 Navesink River Road ("Navesink House") and 1 Dag Hammarskjold Boulevard ("Office Complex") as early as June 2013:

Indications are that TP's master file address, (1 Dag Hammarskjold Plaza, Freehold, New Jersey), is a business office for his family's business. (Hovnanian Builders) . It appears that TP and his spouse reside at 520 Navesink River Road, Red Bank, New Jersey.

The taxpayer's father, Vahak S. Hovnanian, transferred the property at 520 Navesink River Road, Red Bank, New Jersey to the taxpayer's mother for \$1.00 on 09/28/2007. The taxpayer's mother, Paris Hasmig Hovnanian, transferred the property to The Shant S. Hovnanian Asset Trust for \$1.00 on 06/21/2011. This trust transferred the property to Pachava Asset Trust for \$1.00 on 12/16/2011. This deed indicates that The Shant S. Hovnanian Asset Trust had changed its name to Pachava Asset Trust.

(Exhibit "C" at pg. 3.)

23. Agent MacGillivray's Report also demonstrates that the IRS knew and understood that Mr. Shant Hovnanian was not present at the Properties:

ATTEMPTED CONTACT TAXPAYER

RESULTS: FV to 1 Dag Hammarskjold Blvd, Howell Township, New Jersey. Shant Hovnanian's business office.

The doors to the main building were locked. RO gained access to the main building through the office of Jerry Hillman, CPA RO asked an African American woman if Shant Hovnanian was present. She seemed to not know him. She said "Isn't he the manager or something." She instructed RO to go through a door to the rights to gain access to the main building. RO entered the main building to find all of the lights off. RO looked on the first floor and the second floor. All doors were

locked and all lights were off. Shant Hovnanian and/or his secretary were not present. There was an access door to J Vero Associates. RO knocked on the door. A woman came to the door. (RO thinks this is J Vero). RO asked if Shant Hovnanian was present. She stated that she does not remember the last time [sic] that she saw Shant Hovnanian.

RO left.

*ACTION DATE: 03/20/2018 SYSTEM DATE: 03/20/2018
CONTACT: FIELD CREATE ID: 21013529*

ATTEMPTED CONTACT

ATTEMPTED CONTACT - TAXPAYER

RESULTS: FV to 520 Navesink River Road Middletown Township New Jersey Afternoon

As RO drove up the driveway it was apparent that the Range Rover had been moved. RO drove up near the front door and young man was visible walking around the house with black dog. He walked toward RO's vehicle. RO exited his vehicle and walked toward him. RO asked if he is Shant Hovnanian's son Vahak Hovnanian? He confirmed [sic] that he is Shant Hovnanian's son, Vahak Hovnanian. (Note: Vahak Hovnanian is known to be 21 years old). RO asked if Shant Hovnanian was available. He stated that Shant Hovnanian is not present. Shant Hovnanian is currently in Armenia. Shant Hovnanian will return in approximately 1 week. RO handed two envelopes to Vahak Hovnanian and RO's business card:

(Exhibit "C" at pg. 315 to 316).

24. Jessica L. Hollobaugh prepared an expert report and provided testimony on behalf of the IRS. That report and the related testimony are both littered with legal conclusions admittedly outside of the scope of Ms. Hollobaugh's expertise.

25. That expert report in accounting concludes that the bookkeeping for the Trusts was, as one might expect with family matters, not maintained with all of the formalities that may normally be associated with recordkeeping where a third-party is involved. Here, it was all family.

26. Ms. Hollobaugh, during her deposition, admitted that family-owned businesses accounts are typically less formal than companies of a larger size or owned by strangers (Hollobaugh

Dep., 14:11-22; Exhibit “D”).)

27. The IRS sought the testimony of Nina Hovnanian, the current trustee of the Trusts, but not someone who had familiarity or knowledge with respect to the transfer of the Properties to the Trusts.

28. Vahak and Hasmig Hovnanian passed away before the Complaint was filed.

29. Mr. Shant Hovnanian was available for deposition testimony, but the IRS concluded that it was too much trouble to seek his testimony in Armenia, potentially having to invoke the Hague Convention. The foregoing is true despite web-based interactions having become a part of everyday life.

30. The “Pachava” in the name “Pachava Asset Trust” is an acronym reflecting the first initial of the first names of each of Vahak and Paris (Hasmig) Hovnanian’s grandchildren. The “VSHPHH” in the name “VSHPHH Trust” is an acronym reflecting the initials of Vahak S. Hovnanian and Paris H. Hovnanian.

31. The Nominee Liens affect the ownership interests of the Trusts, create a cloud on the chain of title, and render the title to the Properties potentially unmarketable by the Trusts.

32. The IRS has tried to collect tax debts against Defendant Mr. Shant Hovnanian, but apparently has been unsuccessful.

33. Plaintiff now seeks to collect the purported tax debt of Mr. Shant Hovnanian from third parties, including, inter alia, Defendant VSHPHH Trust.

34. Plaintiff claims that the Trust is a mere alter ego of Mr. Shant Hovnanian, or, alternatively, a mere nominee holding property that in fact belongs to Mr. Shant Hovnanian. Plaintiff has made similar claims against several other third parties.

35. The statute of limitations for a fraudulent conveyance claim is four (4) years from the date of the transfer that might be in question.

36. The Complaint itself contains an admission, namely that the 1 Dag Hammarskjold Boulevard property was not contributed to the VSHPHH Trust by Mr. Shant Hovnanian, but was instead contributed by his father and mother.

37. Trust agreement that created the VSHPHH Trust ("Trust Agreement") shows that the Trust was established long before some of Mr. Shant Hovnanian's tax liabilities arose (which the Complaint nor any other communication bothers to mention), that Mr. Shant Hovnanian was never a beneficiary of the VSHPHH Trust (which the Complaint also omits), and that the VSHPHH Trust is irrevocable and could not be undone by Mr. Shant Hovnanian.

38. There are no allegations that either Vahak or Hasmig Hovnanian, the transferors, had an objective in transferring assets other than advancing estate planning.

Dated: May 13, 2022

Respectfully submitted,

HANAMIRIAN LAW FIRM, P.C.



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